

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ROOSEVELT CRAWFORD, JR.,

Defendant-Appellant.

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UNPUBLISHED

August 17, 2004

No. 245253

Wayne Circuit Court

LC No. 02-006424

Before: Wilder, P.J., and Hoekstra and Kelly, JJ.

PER CURIAM.

Defendant appeals by right his convictions of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227(b), following a bench trial. Defendant was sentenced to two years imprisonment for the felony-firearm conviction and a consecutive six months to four years imprisonment for the felonious assault conviction. We affirm.

**I. Facts and Proceedings**

Defendant's convictions arose out of an altercation at a beauty salon at approximately 9:15 a.m. on November 10, 2001. Defendant and his wife, Latonda Crawford, owned the salon and the victim, Nayeeshia Conway, was an independent stylist who worked there. The victim testified that while she was with a customer, defendant asked her to accompany him to his automotive business, which was located next door to the salon. While there, defendant and his wife questioned the victim regarding the relocation of surveillance cameras in the salon. The victim told defendant that she was not involved and returned to the salon. Defendant and his wife followed the victim back to the salon and asked her to leave; she refused and an altercation ensued.

The victim testified that, during the altercation, defendant hit her in the face, grabbed her by the collar, pushed her to the floor and continued to hit her. According to the victim, there were four other people in the salon, including defendant's wife, who were screaming at defendant to stop. Defendant's wife was also kicking and hitting the victim. A barber, Eric Morris, entered the salon and was able to calm defendant, convincing him to back away from the scuffle. Defendant left the salon and returned shortly thereafter wielding a nickel-plated revolver.

The victim further testified that defendant hit her in the head with the gun and threatened to kill her. Defendant's wife attempted to stop defendant by pulling on his arm. The victim was able to escape by pulling out of her shirt, leaving the salon and entering her client's vehicle. Defendant followed the victim to the car and tapped on the window with the gun, ordering her to remove her things from the salon. The victim's client, Tameka Lewis, began to drive away, but accidentally bumped into Morris who was walking behind the vehicle. While Lewis was attending to Morris, defendant opened the door and leaned across the back seat. The victim left the vehicle and ran across the street to a restaurant where she was joined by Lewis shortly thereafter. The victim and Lewis waited in Lewis' vehicle at the restaurant until the police arrived.

The victim made her report to two police officers and, at a later date, went to the police station because no arrests had been made. The victim testified that she had no weapons at the time of the incident and had not threatened defendant in any way. A medical report indicated that the victim had sustained a closed head injury, minor laceration of the left neck and a contusion of the left forearm and elbow. Lewis's testimony was similar to the victim's.

Police officers Patricia Robinson, Charles Barnes and Michael Stafford responded to the scene. Officer Robinson testified that the victim was scared, had a contusion on her head and was wearing a torn shirt. The victim told Robinson that defendant had assaulted her with a gun. Defendant denied the allegations when approached by Officer Robinson. Officer Barnes testified that the victim told him she had been choked, thrown to the ground and struck on the head with a gun, but that he did not see any physical marks on her. Officer Barnes spoke to defendant who denied the assault but admitted that an argument had occurred. Officer Stafford testified that the victim accused defendant of threatening her and striking her on the head with the gun. Officer Stafford noticed a lump on the victim's head. Defendant did not admit to having a weapon and consented to a search. The gun was never found.

Defendant's wife, Latonda Crawford, testified that after the victim became belligerent with her in the automotive shop, she asked the victim to leave the premises. The victim refused and walked back to the salon. Mrs. Crawford followed and began unplugging the victim's curling irons. The victim responded by pushing Mrs. Crawford. Defendant attempted to stop the altercation. Mrs. Crawford did not see defendant punch the victim, but the three of them became involved in a scuffle. Defendant left the salon to call the police and one of the two other women present said that she would call the police and tell them that defendant had a gun.

According to Mrs. Crawford, when defendant returned to the salon he was not carrying a gun but had a silver-colored, multi-function tool on his belt which might look like a gun if pointed at someone. The victim was on top of Mrs. Crawford when defendant returned, and defendant assaulted the victim. Mrs. Crawford further testified that neither she nor defendant kept a gun.

Defendant testified that he believed that the victim weighed significantly more than his wife and was concerned for Mrs. Crawford's safety when the scuffle began. Defendant further testified that he had a pair of silver utility pliers on his belt that unfolds to reveal pliers, a screwdriver and other tools. According to defendant, when he returned to the salon after calling the police, he found the victim on top of his wife and used the tool to hit the victim on the head.

After defendant was able to free his wife, they left the salon. Defendant then saw the victim in a vehicle and tapped on the window with the tool.

The trial court convicted defendant of felonious assault and possession of a firearm in the commission of a felony as charged. Subsequently, defendant filed a motion for resentencing, a new trial and a *Ginther* hearing. Defendant argued that (1) the trial court erred in imposing his sentence, (2) he was denied effective assistance of counsel, (3) the trial court's findings of fact were erroneous and (4) that cumulative evidentiary errors denied him a fair trial. On May 30, 2003, the trial court held a hearing on defendant's motions. The trial court first denied defendant's motion for resentencing. Next, the trial court denied defendant's motion for a new trial, reasoning that it had been free to determine credibility at trial and chose to believe the victim rather than defendant. The trial court further acknowledged both its awareness of defendant's defense of other's defense and its implicit rejection of that defense in its findings. The trial court then heard testimony from the three witnesses that defendant argued should have been called by trial counsel.

Defendant's son, Roosevelt Crawford III, testified that he observed the altercation and accompanied his father to the automotive shop to call the police. According to defendant's son, defendant did not have a gun during the incident and does not keep a gun at his business.

Mrs. Crawford's mother, Velvet Flucker, testified that she arrived at the salon in response to a call from her youngest grandson, Jacob. When Flucker arrived at the scene, the police refused to allow her to enter the salon. While Flucker was outside, she heard the victim tell someone on her cell phone how badly she had beaten Mrs. Crawford. Subsequently, a man and a woman arrived in a vehicle and spoke to the victim. Flucker overheard the woman remind the victim that she had told her to tell the police that defendant hit the victim with a gun. The victim responded that she only told the police that defendant had a gun in order to make them come to the salon. The victim then approached an officer and told him that she had been hit with a gun. The officer told the victim that she had not reported the gun initially and asked her step aside. Finally, an officer emerged from the salon stating that there was no gun and that there would be no arrests. When Flucker entered the salon, she found Mrs. Crawford badly beaten.

Morris, the barber, was the third witness to testify at the post-judgment hearing. According to Morris, he was situated outside of the salon and heard arguing coming from within. When Morris entered the salon, he saw the victim and Mrs. Crawford on the floor. Two women jumped on defendant's back and defendant shoved them away. Morris grabbed defendant's arm as defendant approached the victim and Mrs. Crawford. Defendant told Morris that he was calm and left to call the police. Morris left as well. When Morris returned, the victim and two customers were seated in a vehicle outside the salon and defendant was standing near the vehicle making hand movements. Morris could not hear what defendant was saying, but testified that he did not see defendant with a gun.

After the three witnesses testified, the trial court denied defendant's request for a *Ginther* hearing. The trial court reasoned that the testimony from each witness would have been cumulative and, in the case of Flucker's testimony, hearsay.

On appeal, defendant argues that (1) the trial court made insufficient findings of fact and conclusions of law, (2) the verdict was against the great weight of the evidence, (3) defendant

was denied effective assistance of counsel and (4) the prosecutor engaged in misconduct. We affirm.

## II. Standards of Review

First, a trial court's findings of fact may not be set aside unless they are clearly erroneous. MCR 2.613(C); *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). "A finding is clearly erroneous if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made." *Id.* citing *People v Stoughton*, 185 Mich App 219, 227; 460 NW2d 591 (1990).

Second, when determining whether the verdict was against the great weight of the evidence, this Court reviews the trial court's grant or denial of the motion for new trial for an abuse of discretion. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

Third, the determination whether a defendant has been deprived of the effective assistance of counsel presents a mixed question of fact and constitutional law. The court must first find the facts and then decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel. The trial court's factual findings are reviewed for clear error, while its constitutional determinations are reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

Fourth, we review claims of prosecutorial misconduct de novo. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003). However, defendant failed to preserve the issue for appellate review. Unpreserved claims of prosecutorial misconduct are reviewed for plain error affecting substantive rights. *Id.* "Reversal is warranted only when a plain error resulted in the conviction of a truly innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceeding independent of the defendant's innocence." *Id.*

## III. Analysis

Defendant first argues that the trial court made insufficient findings of fact regarding whether defendant acted in defense of others. We disagree.

MCR 6.403 requires the trial court to make specific findings of fact and conclusions of law in criminal cases tried without a jury. "Findings of fact are sufficient if it appears from the record that the trial court was aware of the issues in the case and correctly applied the law." *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). In such cases, remand for further explanation would not facilitate appellate review. *People v Shields*, 200 Mich App 554, 559; 504 NW2d 711 (1993) citing *People v Jackson*, 390 Mich 621, 627; 212 NW2d 918 (1973).

In the present case, the trial court did not specifically address defendant's testimony that he feared for his wife's safety when it made its findings of fact. However, the trial court specifically addressed defendant's defense of others argument when it denied defendant's motion for a new trial. There, the trial court acknowledged that the prosecution bore the burden of overcoming evidence that defendant had acted in defense of others. See *Jackson*, *supra* at 626. The trial court explained that when it found defendant guilty, it had implicitly rejected the defense. Further, the trial court clarified that, had it ruled for defendant, it would have found that

the prosecution had not met their burden because a sufficient defense had been established. These statements provide an adequate record from which to conclude that the trial court was aware of the issues and correctly applied the law. Remand for further explanation would not facilitate appellate review.

Defendant next contends that the trial court relied on facts not in evidence when it made its findings and that such reliance warrants reversal. We agree that the trial court erroneously relied on facts not in evidence, but find that the error was harmless.

In order to find defendant guilty of felonious assault, the trial court must have concluded that there was (1) an assault, (2) with a dangerous weapon, (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. MCL 750.82; *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). In the present case, the trial court found that defendant hit the victim over the head after she left the salon. The record indicates that the trial court relied on the prosecutor's opening and closing arguments because there is no witness testimony to support that conclusion. However, we find that the error was harmless because there was sufficient other evidence to support defendant's convictions.

In the present case, there was testimony from two witnesses, the victim and Lewis, that defendant attacked the victim with a gun in the salon. Further, defendant admitted to hitting the victim over the head with his pliers during the altercation. The trial court's findings reveal that it specifically relied on the victim's testimony to convict defendant. We find that defendant was not prejudiced by the trial court's error when it mistakenly relied on facts not in evidence to form one of its conclusions. An error is harmless where it does not prejudice defendant and harmless errors do not require reversal. *People v Grant*, 445 Mich 535, 544-545; 520 NW2d 123 (1994).

Defendant next argues that the trial court's finding of fact are insufficient because it failed to describe how it resolved an alleged discrepancy between the victim's description of her assault and the actual injuries she received. We disagree.

Although defendant cites both to the victim's testimony and the trial court's mention of the medical report in its findings, defendant fails to provide any support for his conclusion that there is a discrepancy between the evidence that the victim was hit in the head with a gun and the evidence that she sustained a closed head injury. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Even though defendant abandoned the issue on appeal, we note nevertheless that the trial court was only required to find that defendant intended to injure the victim. MCL 750.82; *Avant, supra*. The record shows that the trial court was aware of the issues and correctly applied the law when it specifically stated in its findings that defendant intended to cause the victim injury.

Defendant next argues that the findings of fact were insufficient because the trial court failed to indicate on the record the weight that it gave to the hearsay testimony of the police officers. We disagree.

Defendant fails to provide this Court with any legal authority to support his conclusions that (1) the police officers' statements were hearsay and (2) the trial court was obligated to

disclose the weight it gave to witnesses' testimony. If a defendant fails to explain his position, his cursory arguments may be deemed abandoned. *Kelly, supra*. However, we note that the record indicates that the trial court acknowledged a credibility conflict between the victim and defendant. The trial court specifically stated that it chose to believe the victim, and this evidence was sufficient to convict the defendant regardless of the weight accorded to the testimony of the police officers.

Defendant also argues on appeal that his convictions are against the great weight of the evidence because the evidence shows that he acted in defense of his wife. We disagree.

"[A] new trial based upon the weight of the evidence should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result." *People v Lemmon* 456 Mich 625, 642; 576 NW2d 129 (1998) (internal citation omitted). Generally, the right to self defense includes that right to defend others. *People v Kurr*, 253 Mich App 317, 321; 654 NW2d 651 (2002). In order to prove self defense, a defendant must show that (1) he honestly believed that he was in danger, (2) the danger feared was death or serious bodily harm, (3) the action taken appeared at the time to be immediately necessary, and (4) the defendant was not the initial aggressor. *People v Deason*, 148 Mich App 27, 31; 384 NW2d 72 (1985)

In the present case, to establish his claim of defense of others defendant relies on testimony that (1) he was concerned for his wife's safety because the victim is significantly heavier than Mrs. Crawford, (2) the victim and Lewis were fighting with his wife, and (3) he only hit the victim once with a pair of pliers. However, the victim and Lewis testified that Mrs. Crawford was assaulting the victim. Further, Mrs. Crawford testified that when defendant returned to the salon, he continued assaulting the victim with the pliers even after he was asked to stop. Finally, the victim and Lewis testified that defendant repeatedly hit the victim over the head with a gun. We do not find that the evidence preponderates heavily against the verdict or that a miscarriage of justice resulted, particularly where "great deference must be afforded the trial court's assessment of the credibility of witnesses." *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003).

Defendant next relies on *Lemmon, supra*, to argue that the discrepancy between the victim's injuries and her testimony seriously impeaches her credibility. *Lemmon* enumerates four circumstances under which the credibility of a witness may be called into question: (1) "where the testimony contradicts indisputable physical facts or laws", (2) "where testimony is patently incredible or defies physical realities", (3) "where a witness' testimony is material and so inherently implausible that it could not be believed by a reasonable [fact-finder]", or (4) "where the witness' testimony has been seriously impeached and the case marked by uncertainties and discrepancies." *Id.* at 643-644 (internal citations and quotations omitted). Again, defendant fails to show how the victim's testimony and medical report are actually inconsistent. Absent proof that a closed head injury resulting from gun blows to the head is contradictory to indisputable physical facts or defies physical realities, we find that the victim's credibility has not been seriously impeached and that a reasonable fact-finder could believe her testimony.

Defendant also asserts an ineffective assistance of counsel claim. In order to prove ineffective assistance of counsel, a defendant must show that (1) the attorney's performance was

deficient and (2) but for the attorney's error, a different outcome reasonably would have resulted. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001).

Defendant first argues that trial counsel erred when he conceded that defendant was guilty of felonious assault. We disagree.

A defendant is not necessarily deprived of effective assistance of counsel when trial counsel argues that defendant is guilty of an offense. See *People v Wise*, 134 Mich App 82; 351 NW2d 255 (1984); *People v Walker*, 167 Mich App 377, 382; 422 NW2d 8 (1988) rev'd on other grounds *People v Mitchell*, 456 Mich 693; 575 NW2d 283 (1998). When attempting to demonstrate that an attorney's performance was deficient, a defendant must overcome the strong presumption that counsel's actions were part of sound trial strategy. *Carbin, supra*. Trial counsel's statements were part of a strategy to concede guilt of an assault in order to better defend the felony-firearm charge. Trial counsel admitted that defendant was guilty of assault in his opening statement but immediately followed with the assertion that the evidence would prove that defendant did not have a gun. "Where the evidence obviously points to defendant's guilt, it can be better tactically to admit to the guilt and assert a defense or admit to guilt on some charges but maintain innocence on others. Such a trial tactic may actually improve defendant's credibility and will not be second-guessed." *Walker, supra*. (internal citations omitted). Accordingly, we decline to second-guess trial counsel's strategy in the present case.

Defendant also argues that concession of defendant's guilt without indication that he consented to the strategy is deficient conduct. We disagree. "Although an on-the-record inquiry to see if the defendant consented to such a defense is preferable, due process does not require it." *Wise, supra* at 99. In *Wise*, the defendant was charged with breaking and entering. The defendant in *Wise* admitted to the charge while testifying, but asserted a claim of ineffective assistance of counsel on appeal because his trial counsel conceded guilt in his opening statements. This Court held that "[t]he defendant, while testifying, admitted to the breaking and entering. Therefore, the record clearly shows his consent to his trial attorney's tactics." *Id.* In the present case, defendant admitted to assaulting the victim with a pair of pliers during his testimony. Accordingly, we find that the record shows defendant's consent to his trial attorney's tactics.

Defendant next argues that trial counsel improperly failed to call several witnesses who could rebut the victim's testimony that defendant had a gun. Failure to call witnesses constitutes ineffective assistance of counsel only if it deprives the defendant of a substantial defense. *People v Daniel*, 207 Mich App 47, 58-59; 523 NW2d 830 (1994). In the present case, trial counsel attempted to impeach the victim's credibility by alluding to her drug use and the inconsistencies between her preliminary examination and trial testimony. Further, trial counsel elicited testimony from a responding police officer that defendant allowed the officer to search for a weapon and that the weapon was never found. Therefore, we conclude that defendant was not deprived of a substantial defense, and trial counsel's failure to call witnesses does not constitute ineffective assistance of counsel.

Defendant next argues that trial counsel failed to present the defense of others defense at trial. A review of the record indicates that this argument lacks merit. We find that defendant's trial counsel did raise the defense of others defense through cross-examination of witnesses and through defendant's testimony. Defense counsel elicited statements from witnesses that the

altercation was frightening. Moreover, the trial court acknowledged that defendant's testimony was "replete with statements that he was concerned for the safety of his wife." When the trial court denied defendant's motion for a *Ginther* hearing, it determined that defendant's trial counsel had asserted the defense. Because the trial court was aware of the defense, we find that defense counsel's conduct did not affect the outcome of the trial.

Defendant also argues that trial counsel's failure to object to hearsay testimony by the prosecution's police witnesses constitutes ineffective assistance of counsel. On appeal, defendant fails to provide any legal authority for his assertion that the testimony was, in fact, hearsay. See *Kelly, supra*. However, we note that counsel is not required to make futile objections. *People v Thomas*, 260 Mich App 450, 457; 678 NW2d 631 (2004). The admission of hearsay testimony is harmless if that testimony is cumulative. *People v Lee*, 177 Mich App 382, 392; 442 NW2d 662 (1989). The statements in question relate to the victim's report to police officers that defendant had a gun. These statements are cumulative of the victim's and other witnesses' trial testimony. Trial counsel's failure to object to the harmless admission of the statements did not effect the outcome of defendant's trial.

Defendant's final issue on appeal is that the prosecution made remarks during its opening and closing statements that constituted prosecutorial misconduct. We agree. However, reversal is not warranted because the prosecution's conduct did not result in the conviction of a truly innocent defendant, nor did it seriously affect the fairness or integrity of the proceeding. *Ackerman, supra*.

The prosecution may not make statements of fact that are unsupported by the evidence in the case. *People v Fisher*, 193 Mich App 284, 291; 483 NW2d 452 (1992). In the present case, the prosecution stated that defendant had struck the victim while outside of the salon. There is no testimony in the record to support that assertion. However, even if the trial court mistakenly relied on the prosecutor's statements, defendant's substantial rights were not affected. There was sufficient other evidence at trial to support defendant's conviction of felonious assault, including defendant's own testimony that he struck the victim while inside the salon. We find that the prosecutor's statement did not result in the conviction of an innocent defendant, nor did it seriously affect the fairness or integrity of the proceeding.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Joel P. Hoekstra  
/s/ Kirsten Frank Kelly